

The State Vs. Pyarelal

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Court : Rajasthan

Decided On : Aug-08-1952

Reported in : AIR1953Raj104

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : Rajasthan Public Gambling Ordinance, 1949 - Sections 13

Appeal No. : Criminal Appeal No. 47 of 1951

Appellant : The State

Respondent : Pyarelal

Advocate for Pet/Ap. : L.N. Muhta, Dy. G.A.

Disposition : Appeal dismissed

Judgement :

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Pyarelal of an offence under Section 13, Rajasthan Public Gambling Ordinance, 1949 (48 of 1949).
2. It appears that the challan in this case was presented to the City Magistrate Jodhpuron 8-2-1951. The case was thereafter transferred on that very day to the Extra Magistrate for disposal. On that day the property concerned in the case was

not brought and, therefore, the statements of the witnesses could not be taken. The case was put off to 9th February when the statement of the accused was taken. But the prosecution evidence could not begin as the property with respect to which the statements were to be taken had not been brought. The case was then fixed for 13-3-1951 and on that day again the property was not produced in Court. Thereupon the Magistrate closed the case for the prosecution and acquitted the accused as there was no evidence in support of the prosecution case. The present appeal is against this order of the Magistrate.

3. It appears that the property was in the possession of the police, and therefore the fault lay primarily with them. Even so we might have ordered retrial; but we find that it would not be worthwhile having a retrial for there is no case made out against Pyarelal under Section 13, Rajasthan Public Gambling Ordinance, even accepting the facts as given in the report of Sub-Inspector Kanaiyalal as correct.

4. He says in his report that he received information from an informer that Pyarelal went about in public collecting bets on digits and that at that particular moment would be found near Kantalia's cinema. Consequently, Sub-Inspector Kanaiyalal went out in search of Pyarelal in order to catch him. He found Pyarelal sitting at the shop of his son Ram Gopal near Kantalia's cinema. He asked Pyarelal to come down from the shop and thereafter searched him and recovered a bag containing pieces of paper on which we take it that some bets were recorded. There is nothing, however, in the report of Sub-Inspector Kanaiyalal to show that he saw Pyarelal collecting any bets in any public street, place or thoroughfare.

5. The relevant portion of Section 13, Rajasthan Public Gambling Ordinance, 1949, is as follows:

'A police officer may apprehend without warrant any person found gaming in any public street, place, or thoroughfare.....Such person when apprehended shall be brought without delay, before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month.....'

6. The gist of the offence under Section 13 is that a person should be found gaming in any public street, place or thoroughfare. That means that the accused should be actually gaming in any public street, place or thoroughfare when caught. In this case, there is no allegation even that Sub-Inspector Kanaiyalal or anybody else actually found the accused gaming in any public street, place or thoroughfare in the shape of collecting bets from any member of the public. In the absence of any such allegation, no case can be made out under Section 13. Rajasthan Gambling Act against Pyarelal. Even if we were inclined to interfere in this case, it would not be worthwhile doing so.

7. The appeal is hereby dismissed.

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